

The 1991 National Wage Case: Higher education and enterprise bargaining

Di Zetlin,
FAUSA General Secretary

In 1991 a consensus was emerging between the major industrial players to the effect that the focus of industrial negotiations should shift to the enterprise level. The ACTU and the Commonwealth Government took proposals on enterprise bargaining to the Australian Industrial Relations Commission (AIRC) as part of the Accord Mark VI.

Beyond agreement on the shift of focus to the enterprise level there is, in fact, little common ground. The relationship between enterprise level and national wage movements, the definition of enterprise, the composition of bargaining units, the criteria for bargaining, the term of enterprise agreements and their continuation are all matters of contestation.

The implications of enterprise bargaining for academic staff will be affected significantly by negotiations in the Australian Public Service. Despite an early commitment by the Commonwealth Government and the Public Sector Union (PSU) to implement the Accord Mark VI within the public sector, negotiations broke down late in 1991. Those negotiations have resumed subsequently, partly on the framework for public sector enterprise bargaining recommended in a report by Professors Niland, Brown and Hughes (1990).

This article reviews the debate that has emerged on enterprise bargaining in the public sector and explores some of the implications for higher education.

Enterprise bargaining - The AIRC way

During the early part of 1991, academic unions were preoccupied with the Full Bench hearings on award restructuring.

In April 1991, as this process was awaiting determination, the AIRC handed down a National Wage Case decision which rejected the fundamental propositions of the Accord Mark VI put to it by the Commonwealth Government and the ACTU. The ACTU responded with anger, opening up a period of uncertainty about the future direction of wage fixation. The central issues still unresolved are the roles of the Arbitration Commission in national wage movements and the role of enterprise bargaining in industrial relations.

In August 1991, the Commission agreed to review the April decision. The Commission's decision was handed down in October 1991. (Print KO300). The Commission noted "a diversity of opinions and a failure to confront practical problems". However, conceding that "there is little prospect, it would seem, that further postponement will lead to more fully developed proposals or to the resolution of points of disagreement", the Commission concluded that "we are prepared, on balance, to determine an enterprise bargaining principle" (p.3).

The Commission set out principles for enterprise bargaining and canvassed options for processing enterprise agreements under relevant sections of the Australian Industrial Relations Act. The Commission set out two principal components upon which the merits of any agreement should be tested (p.16). These are:

- the agreement continues implementation at the enterprise level of the award restructuring process
- wage increases "are based on the actual implementation of efficiency measures designed to effect real gains in productiv-

ity". Wage increases have to be separately justified for each level within a classification structure.

The second principle continues the Commission's policy of providing a broadly based definition of productivity as in the award restructuring principles. In adopting a broader understanding of productivity in the August 1989 Structural Efficiency Principle, the Commission was responding to the criticisms of many unions that management used productivity in the Second-Tier agreements for 1987-88 in a narrow cost-cutting manner. The October 1991 decision remains broadly based, although somewhat inhibited, in comparison with the SEP principle, by the statement that wage increases achieved through enterprise bargaining should "be justified by and commensurate with employees' contributions to enterprise efficiency and productivity" (p.4).

The decision does not address the question of how the concept of productivity should be applied in the public sector or in areas such as Universities and the teaching profession. This raises questions as to whether employer groups in the public sector themselves have a broad understanding of productivity as enunciated in the Commission principle. One of the main reasons why negotiations on these principles in 1991 between the Commonwealth Government and the PSU broke down was because the PSU argued the Government was adopting a cost-cutting, trade-off approach to the negotiations.

The Commission resolved that it would decline to arbitrate enterprise agreements because of the dangers of establishing standards and exacerbating flow-on effects. They also determined that enterprise agreements would lapse after their stated period of operation unless the parties applied to extend them. These constraints effectively put the responsibility upon the parties to reach consent on an ongoing basis. The alternative, put by the ACTU, would be to have enterprise agreements continue until either party called for their variation or cancellation. The requirement for consent and the denial of access to arbitration on enterprise agreements will have a differential impact on differing sections of the workforce. Where workplaces are well organised and the production process is dependent upon meeting time lines and/or production targets, unions have a greater capacity to use industrial action to generate "consent".

Consent-based enterprise bargaining is unlikely to assist workers in industries which have low levels of unionisation, and/or high levels of casual and part-time labour where attachment to bargaining is weak. It is also unlikely to assist workers in industries where "production" is only loosely tied to target outputs.

The real achievements that women workers have been able to make under award restructuring and the minimum rates adjustments process may well be put at risk. Award rates for women have increased by 7% compared with increases of 6.8% for men during the process of minimum rates' adjustments. (Department of Industrial Relations, 1991). In a survey of gender wage gaps internationally, a report by the National Pay Equity Coalition notes that Australia has a gender wage gap of 21% compared with 30% and 40% respectively for the USA and Japan (1990, p.9). The report argues that strong unionism and a centralised wage fixation system are the key elements which explain

Australia's relatively better performance.

In its October 1991 decision the Commission expressed concern about the flow-on effects of enterprise agreements. This apprehension led the Commission to set in place constraints upon enterprise agreements and to canvass the appropriateness of alternative sections of the Industrial Relations Act.

In considering which sections of the Act were appropriate to enterprise bargaining, the Commission expressed a strong preference for operating enterprise agreements under s.115. On technical grounds the Commission allowed for enterprise agreements to be made additionally under s.112, under specified conditions. S.115 was introduced in 1988 to provide for certified agreements at an enterprise level. S.112 allows for awards to be made when the parties to a dispute reach agreement. Following the decision of the Full Bench, the Commonwealth Government has commenced a review of these sections of the Act with the objective of facilitating enterprise agreements through s.115.

Enterprise bargaining in the public sector

Prior to the October National Wage Case Decision, the Commonwealth Government and the PSU had continued negotiations on the implementation of the Accord Mark VI despite the rejection by the Commission in April. The negotiations were based upon an assumption by the PSU that the Accord Mark VI increases for public servants would be based upon a market rates' survey. The PSU expected that the Commission would continue to apply different criteria for paid rates awards which predominate in the public sector to those which apply in the private sector where minimum rates apply. The most significant difference was that, as paid rates represented the actual amount paid, the Commission allowed variations in wages to be approved on the basis of market surveys.

In the meantime, the Commonwealth Government was conducting its own examination of the implications of enterprise bargaining. A Committee of Heads of Australian Public Service Agencies provided a report to the Minister for Industrial Relations in September 1991. At the same time, an expert committee, comprised of Professors William Brown, Barry Hughes and John Niland, was asked to address the issues of productivity in the public sector and the devolution of bargaining to an agency level.

The October decision of the Commission gave little comfort to public sector employees and those on paid rates' awards. Confirming its reservations about paid rates' awards and its preference for minimum rates' awards, the Commission restated concerns expressed in April about the use of market surveys to justify salary increases under the paid rates principles. The Commission went on to disallow market comparisons under the enterprise bargaining principle and required any variation to awards using market factors to be treated as a special case before a Full Bench. Pending the bearing of such a special case, the Commission decided that paid rates and minimum rates' awards would be treated in the same way (p.9). This effectively ruled out the possibility of across the board increases in the public service on market considerations unless the PSU were prepared to run a special case.

The report by Professors Brown, Hughes and Niland is a substantial document which may change the agenda of industrial relations bargaining in the public sector. It will have direct implications for higher education because of the practice of the Commonwealth Government of basing negotiations for academic staff on precedents set in the public service.

The Report has two major components. The first part is a review of the arguments about productivity in the public sector. The second part examines the possibilities for enterprise bargaining in the public sector and explores mechanisms for the implementation of agency agreements.

Public sector productivity

A contribution from Professor Colm Kearney commissioned for the Report rejects the applicability of value productivity measures in the public service (Appendix 1).

Kearney evaluates the usefulness of simple factor productivity measures, total factor productivity measures and performance indicators as measures of productivity in the public service.

Productive efficiency measures evaluate "how much output can be produced from a given quantity of inputs (or vice versa)" (p.70-1). Generally, such an evaluation is based upon a quantitative measure which defines the quantity of input required to achieve a defined output (single factor productivity). Total factor productivity examines "the ratio of the quantity of output to some index of inputs including both labour, capital and perhaps other inputs in addition" (sic.) (p.72).

Kearney argues that both these methods of evaluation of productivity are inappropriate for the public sector. He argues that they have serious statistical measurement problems when applied to the public service. The public service operates on the basis of a wide range of outputs which could not be reduced to a single factor such as price. Often, the public sector is required to provide a service where price mechanisms have failed, as in the provision of subsidised services. Moreover the range of objectives from national defence to social security make comparison meaningless. The assumption that labour inputs can be easily measured and undifferentiated does not make sense in an environment where quality of service and intangible outputs such as policy advice are involved.

Kearney further argues that these limitations render value productivity measures useless particularly "in making fine-tuned comparisons across closely related agencies over short periods of time such as are necessary in order to provide a framework for workplace productivity bargaining." (p.72)

The Niland, Brown and Hughes Report carried Kearney's theoretical criticisms into its practical rejection of attempts by the Department of Finance to calculate productivity achievements in the public service.

The Report draws heavily on the pay reforms to the British civil service developed during the Thatcher years, in which central wage movements based on comparators have given way to a cocktail system in which base rates provide incremental progression to a point at which individual performance pay, sometimes against budgetary ceilings, takes place.

As is the case in Australia, these reforms to wage fixation have taken place against other decisions on public sector operations. In the United Kingdom and Australia, public sector departments operate on running costs systems which provide close to a one-line budget, part of which may be carried forward. The argument is that such a system allows greater flexibility and avoids the inefficiency of spending at the end of each financial year to exhaust the budget allocation. In Australia, the running costs budgeting practice has been augmented with the efficiency dividend in which each Department has to cut expenditure at an annual rate of 1.25% to 1993-4. This system of achieving industrial "efficiencies" by the sheer force of cutting the cloth, is one that is familiar to academic staff. One of the most laudable features of the Report is that it notes that while these measures might be assumed to achieve greater efficiencies, the reality is that no-one has a measure of what has actually happened and whether these budgetary requirements have led to improvements in the quality of service. (p.17-20)

All of these factors provide a solid basis for the Report to reject current methods of discussing productivity in the public sector. But they do not explain why the Report, having dispensed with the development of productivity measurement for the public service, takes an unexplained leap to discussing performance indicators, describing "performance indicators" as "a looser version of traditional productivity measures". (p.12). Professor Kearney's paper notes that performance indicators are more subjective than productivity measures and that if they are articulated in detail they induce conservative managerialism (p.73). Notwithstanding these problems, the Report embraces performance indicators as the model for productivity bargaining in the public sector.

The use of performance indicators as a surrogate for productivity and as a tool in the industrial relations agenda in the Australian Public Service is relatively novel. The Report provides scant treatment of

what performance indicators might be reliably measured. Public Service Departments differ enormously in the nature of performance required. The client base can be as wide as the population as a whole or as narrow as a tightly defined group such as war veterans. Client satisfaction may be determined by political goals. For example, a government which wishes to limit access to unemployment benefits might require staff to perform differently from a government which wishes to ensure that the unemployed receive prompt and sympathetic consideration based on needs. There are intrinsic difficulties in measuring the performance of policy advisers. Some Departments have a public responsibility to exercise when their client base is internal to the Australian Public Service itself, such as the Department of Finance. Which is its more important performance criteria, achieving cost savings in the public service or satisfying the public service that it is fair and equitable in its treatment of other Departments? Is it possible that the actions of the Department of Finance in making improvements in its own internal efficiency, might create inequities for other Departments? At best, the Report glosses over some of these questions.

The debate on performance indicators is somewhat more advanced in higher education than it is in the public sector as a whole. Evaluating the "quality and efficiency" of higher education has been a preoccupation of governments and advisory bodies since the Williams Enquiry of 1976. In the 1980s the Commonwealth Tertiary Education Commission (CTEC) took up the banner of performance with a flurry of commissioned reports, concluding in the publication of the CTEC Review of Efficiency and Effectiveness in 1985. The theme continued through the Green and White Papers of 1987-8 and resulted in the commissioning of an expert group in 1989. This group, chaired by Professor R.D. Linke, brought down a two volume report in 1991. The report on "Performance Indicators in Higher Education", summarising the results of extensive trialing, identified some twenty-four indicators that may provide some overview of performance (pp.xv-xxiv).

Of the indicators identified, six were regarded as being capable of implementation on current data. These were: equivalent full-time student load; a Student Offer Ratio; an indicator of Total Recurrent Cost per Student; an indicator of Graduate Employment Status which was seen to be useful of system monitoring, but not for institutional performance; an indicator identifying the number and value of research grants; an academic staff gender ratio and a commencing student gender ratio. A further fourteen indicators were identified which the Report argued could be used if data were developed. The data requirements ranged from better reporting through to much more contentious requirements such as a proposal that the State admission centres develop a standardised entry score for student applicants. Four indicators were identified that might warrant further research.

Despite the rigorous testing carried out by the expert group, its findings, even assuming data improvement and user sensitivity to interpretation, are highly qualified in two fundamental ways. The first relates to the acceptability of performance indicators as a measure of quality.

The Linke Report concludes that:

It is apparent from the analysis of individual indicators that we may specify certain quantifiable measures of efficiency and effectiveness of performance and that these may provide useful profiles of institutional activity. However, in no area of academic performance is it possible to generate systematic data which would adequately serve as the sole source of information leading to an acceptable evaluation of quality. This is not to say that the issue of quality cannot be addressed. Rather, the measurement of quality must be viewed in the context of the adoption of multiple indicators, sensitively attuned to the specific needs and characteristics of particular disciplines, and which adequately reflect the underlying purpose of which the assessment is required. (p.xiii)

Of greater importance is the over-riding problem of how performance indicators might be useful in a system of higher education where diversity is an objective of government policy.

In a report designed to provide quantifiable comparators, it is perhaps ironic that the final recommendation of the Linke Report is:

that further research be undertaken on possible methods for determining the relative diversity of academic provision across institutions in a more consistent way with a view to implementing an appropriate form of indicator as soon as possible. (p.126)

While the idea of a diversity indicator would be every consultant's dream, this final recommendation draws attention to the fact that one of the dangers of performance indicators is that they encourage performance to meet the indicator and stultify innovation. A set of performance indicators for higher education may produce the "uniform" system everyone appears to argue is undesirable.

The Linke Report had as its objective the measurement of institutional performance and made no attempt to discriminate between elements of the indicators which could be attributed to various inputs such as staff productivity. Indicators which demonstrate improved student progression rates might be attributable to better staff performance in teaching. Alternatively, progression rates might improve if instruments such as the Higher Education Contribution Scheme impose a penalty for failure. Progression rates might also improve if only the brightest students are recruited or, alternatively, if the standards expected of student performance are dropped. Attempting to quantify the relative contribution of such a diversity of factors would be an industrial relations challenge of some magnitude.

Most importantly, the Linke Report fails to identify the factors in institutional performance that are beyond the control of the institution. Higher education is fundamentally about providing a public good. Factors such as a rapid expansion in student enrolments might be seen to be in the public interest but bring no productivity benefit to the institution or its staff. An indicator which identifies the number and/or value of research grants awarded may be more a reflection of government priorities for research effort than of capacity. This issue is canvassed in the Brown, Hughes and Niland Report. They point out that where the public good is concerned, it is possible to have a productivity improvement for the client without resources being released to the agency. They cite the example of the Australian Taxation Office where achieving faster tax refunds brings no direct benefit to the Office. The Report notes that "in similar vein, ACTU Secretary Bill Kelty notes a need for '... full supplementation for the productivity where the increased services are required for the economy or the social well being of the country'". (p.20)

On balance, it should be recognised that performance indicators are not going to yield quantifiable measures of public sector effectiveness which can discriminate for the purposes of wage fixation. Further work may reveal that they can provide a highly qualified framework for negotiation. But the flesh that may be put on those very bare bones will be the contested arena of industrial negotiation.

The Brown, Niland, Hughes Report seeks to interpolate quality and a "culture of productivity" into this gap concluding that, "in one general sense, however, quality must be a consideration in pay". (p.14). The Report justifies its stance by reference to the private sector where quality considerations are reflected in better price and the retention of skilled staff through higher wages. (p.14 & 15). They might have added that retention of market share and profit return are the external constraints upon the continuation of such rewards and that such measures are not always available to the public sector.

The sequence of conclusions bears reflection. The Report moves away from notions of productivity because existing measures can only be applied loosely to public sector performance. The framework shifts to an even looser notion of performance as a surrogate for productivity. But performance itself is severely limited as an objective and quantifiable measure. The measure then enters the ethereal realm of quality.

It is beyond the scope of this paper to clear the ether. It is worth noting, however, that unions are likely to view with suspicion any system of pay determination which moves progressively away from standards that are susceptible to measurement. Unions will understandably want to know whether "quality" is to become the new means by which management prerogative is to be exercised. In the absence of agreed measures, is quality to be what management prefers? Is it likely that management and unions will agree on quality measures? Is it

likely, for example, that management in public sector institutions will agree that socio-economic representation is an indicator of responsiveness and, therefore, quality, in public sector employment? Does the debate on quality countenance the difference between measures of quality assurance in which agreed indicators are evaluated and quality enhancement in which reward for risk is countenanced? In conclusion, it should come as no surprise that issues of productivity and performance have emerged as benchmarks for public sector pay determination. In this sense, Australia is simply part of an international debate. The Brown, Hughes and Niland Report has the merit of recognising that productivity measures in the public sector should not be based on narrow cost-cutting efficiency mechanisms such as the running costs system and efficiency dividends. It also provides cogent arguments against using the existing measures applied to measure productivity in the private sector. Its weakness is its resort to more and more subjective concepts as surrogates for productivity. In higher education, the Linke Report provides a framework within which some of these questions may be critically evaluated. At the end of the day, however, it is unlikely that the debate on productivity and performance in the public sector will discover strictly quantifiable measures. Nor would this be desirable if we wish to maintain a system in which multiple objectives, diversity and innovation are to flourish.

The second major component of the Brown, Hughes, and Niland Report is its discussion of the bargaining framework for productivity/performance negotiation within the public sector. A shift to enterprise bargaining may have significant consequences for the structure of both the bargaining process and the principles of pay determination in the public sector.

The prospects for enterprise bargaining in higher education

Performance based pay schemes fall into a number of diverse patterns. At one extreme they are highly individualistic and based upon judgements about industrial performance. At an intermediate level, performance pay schemes may provide bonuses for work groups according to targets. At the broadest level performance pay schemes may distribute rewards across the organisation through an agreement to work to collective goals. It should not be assumed that a move to productivity/performance bargaining is necessarily a move away from centralised systems of wage determination to highly decentralised systems. Nor should it be assumed that productivity and performance bargaining is restricted to issues of pay. It is perfectly possible to have a system of productivity bargaining which allocates some functions such as pay to a central agency and devolves some other matters such as terms and conditions to a lower level. It so happens that the debate on productivity and performance in the public sector is associated with a climate which presumes that it is desirable to move from a centralised system to a decentralised one.

The Brown, Hughes and Niland Report canvasses these issues within the context of the public service. The model finally recommended in the Report provides for the continuation of common non-pay conditions such as superannuation and maternity leave at a service-wide level. In addition "all agencies would conform to a common structure of base pay and conditions, but they would have discretion to negotiate their own additional productivity-related payments". (p.47) Agency based negotiations would take place on the basis of a "framework agreement" negotiated between the public sector unions and the government. There would also be a "readiness audit" conducted within each agency before an agency could enter agency-based negotiations. (pp. 53-4).

In a lapse into cost-cutting rhetoric, the Report recommends that "as a general rule, all increased benefits embodied within agency agreements should be self-funding". This stance is, however, modified by two considerations. The Report acknowledges that type of function (eg core policy responsibility) and present performance of function (near exemplary) might define situations in which supplementation is warranted. Secondly, the Report acknowledges that if an agency agreement has the effect of improving "worthwhile service to the

public in a significant fashion", supplementation may be warranted. (p.52).

The Brown, Hughes and Niland Report does not embrace the "New Right" models of enterprise bargaining exemplified in NSW legislation. However it does propose a model of industrial negotiation for the Australian Public Service which is radically different from present arrangements.

In many respects, the model proposed by the Report is less challenging to higher education unions than to public sector unions. Industrial relations in Universities is already characterised by a combination of system-wide regulation and institutional regulation with some State-based awards in the former college sector. FAUSA, in particular, has an organisational structure in which branches at an institutional level play a strong role and demand a high level of independence.

The question for higher education unions is not so much can we move to the sort of industrial framework advocated in the Brown, Hughes and Niland Report but do we want to or do we have an alternative?

A primary consideration is that it seems unlikely that national wage cases will deliver significant wage increases in the current environment. Although the ACTU Congress supported a national wage increase early in 1992, this has not eventuated but may be achieved in the second half of 1992. Academic salaries were increased significantly above the community standard of 6.1% under the Structural Efficiency Principle, but these increases did not fully restore salaries to their high point in the 1970s. Faced with projected academic labour market shortages and the massive pressures on performance already exacted through the changes to higher education in recent years, there is a compelling argument for further pay increases for academic staff.

Against this, it is highly unlikely that academic staff will accept an approach based on greater workloads or short cut efficiency measures. A survey conducted by FAUSA in 1991 indicated that staff were concerned that quality was starting to suffer as a result of unfunded enrolments and increased workload pressures. Moreover, there are very real concerns that some of the potential benefits of career enhancement achieved under the Structural Efficiency Principle would be eroded by any significant shift to enterprise bargaining. The AHEIA's punitive and individualised approach to performance appraisal during the SEP negotiations and subsequently in Full Bench proceedings should be a warning about the readiness of higher education management to take a broad-based approach to productivity. In addition, the evidence about the deleterious effects of decentralised pay systems for women workers should be considered in the highly gender segmented academic labour market.

Collegiality in its more democratic forms has given academic staff the opportunity to have their local Branch of the union involved in decision making. But this is a significant distance from the bargaining processes of collective agreement. Collegiality has been a forum for debate rather than a negotiating process. It has been oriented towards issues to be resolved sequentially rather than to achieving an industrial agreement drawn from management and union agendas. Collegiality has tended to be discipline oriented rather than institution wide and has tended not to be concerned for the broader academic community.

Against this there will be some academic staff who will be loath to see the principles of industrial bargaining firmly entrenched at the institutional level.

Additionally, academic staff tend to have loose and sometimes conflicting loyalties, with some suggesting that the academic labour market needs to be understood more by reference to discipline than to academia (Sloane, J et al 1990 p.4). This may work against the cohesive organisation associated with successful collective bargaining.

It is clear that if enterprise bargaining is introduced in higher education, this question of the relationship between collegiate principles and bargaining processes will require substantial debate.

In this uncertain industrial climate, one of the few certainties is that no system makes everybody happy. The issues posed by productivity and enterprise bargaining are important challenges to be met. To date,

the October decision has generated more debate than results. The latter part of 1992 should determine whether the concepts have "legs", as the jargon puts it.

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Notes

1. This issue is canvassed in Pusey, M. (1991), *Economic Rationalism in Canberra*, Cambridge University Press, Australia. His critique on the link between selectivity in recruitment and career policy is controversial but, if accepted, damning.

2. See, for example, OECD, 'Recent Trends in Performance Appraisal and Performance-Related Pay Schemes in the Public Service', *Public Management Studies*, Paris, 1988./

Universities and enterprise bargaining

Laura Bennett and Michael Quinlan

Griffith University

In mid 1991 the *The Australian's* Higher Education Supplement reported the Opposition spokesman on education, Dr David Kemp, "as stating that the Opposition was committed to 'restoring the freedom universities need to manage their staff'" (*The Australian*, 10/7/ 1991, 11). This 'freedom' was to be based on voluntary agreements and the principles of enterprise bargaining. The comment by Dr Kemp highlights the values which are central to the conservative industrial relations policy. These are not essentially about restoring some mythical freedom of choice for workers and employers but rather about entrenching an unfettered managerial prerogative, restoring management's 'right' to manage. Such policies seek to reverse the historical trend of the last 100 years which has seen the progressive establishment of industrial legislation designed to limit managerial prerogative. The new conservative offensive, however, goes beyond merely seeking to repeal the fetters of existing legislation. It also seeks to confer further powers on employers and to deunionise the workforce through the promotion of 'voluntary agreements'. As Dr Kemp's remarks make clear, academics will be subject to the general principles of the Opposition's industrial relations policy.

In recent years a shift to enterprise bargaining has also been promoted by the federal Labor Government and the ACTU. However, the notion of enterprise bargaining used by the ACTU differs significantly from that advanced by the Coalition. Both the federal government and the ACTU see enterprise bargaining as occurring within the existing legal framework for regulating industrial relations. A shift to enterprise bargaining in the universities under existing laws would not have the same implications for academics as that proposed under the Coalition. This is not to say that there will be no significant changes in the employment conditions for academics under the former.

In this paper we explore the implications of enterprise bargaining for academic staff and academic unionism under the different models of enterprise bargaining advocated by the present government and the federal opposition.

The Conservative Approach: Enterprise bargaining and managerial prerogative, voluntary agreements and enterprise unionism

Under the Coalition's proposed industrial relations policy union recognition or the right to bargain is not guaranteed. This contrasts with the existing legislative framework where union recognition and bargaining (over some issues) is virtually assured. Unions registered under the federal Industrial Relations Act have the right to recruit members from particular occupations or industries in accordance with their registered rules and to bargain on behalf of those workers. Since a determination can be reached via arbitration even if the employer refuses to deal with the union, employers are encouraged to recognise and negotiate with unions (equally employers can take matters to arbitration if a union refused to consider an employer-initiated claim). Disputes may be resolved through direct negotiation between the parties or conciliation, and in practice the vast majority of disputes are resolved without recourse to arbitration. The awards, agreements or determinations that result cover both union and non union members of the employers concerned.

The speeches of the Shadow Minister for Industrial Relations, John Howard, however, clearly enunciate a vision of enterprise

bargaining where employees will be encouraged/forced to by-pass unions and deal directly with their employers. Employees may choose union representation if they wish by nominating either an existing union or one formed by workers at that enterprise as a bargaining agent. It is not clear what, if any, legal recognition such bargaining agents will enjoy or what new rules will regulate such bargaining. These ground-rules are vital. In the United States, for instance, union recognition or rights to bargain and bargaining practices are highly regulated - and in a manner unfavourable to unions. The procedures in the United States have offered little protection to organised workers from 'sham bargaining...changes in employer operation or other forms of management resistance or attack', they have raised the cost of new organisation and, by forcing an enterprise focus on workers, they have rendered wider industrial and political action difficult and ineffective (Rogers 1990:1). In the post-war period union density in the United States has declined from a peak of 25.5% in 1953 to 16.4% in 1989 and the particular form of American labour law (based on enterprise bargaining) is seen as playing a pivotal role in the decline of American unionism (Rogers 1990: 54).

If guaranteed recognition was removed in Australia many groups of employees (such as those in small business, retailing, tourism and other service industries) would find it very difficult to secure union recognition or would be obliged to accept the union the employer finds most acceptable. Where this is the case one may question how bargaining is to occur on an equitable basis. An employee without union representation is unlikely to risk confrontation with an employer if they fear losing their job or damaging their prospects of promotion. Equally, as the Japanese experience shows (see Chalmers, 1989: 173-196) the enterprise-specific unions which most employers might favour are (by definition) often small and lack the resources or logistical strength to bargain effectively on behalf of their members. Further, in contrast to industry or occupation-wide awards (and more specific enterprise agreements generally consistent with these in terms of wage rates, hours etc) that exist at present, the Coalition's reforms are likely to lead to a fragmented system entailing a multitude of workplace or enterprise agreements whose enforcement would be problematic to say the least.¹ If the experience of New Zealand (where similar laws have been introduced) is any guide, for many workers these agreements will involve a significant deterioration of wages and working conditions (see for example Casey, 1992: 9-10; Ryall, 1991: 7 and Wilson 1991:268-275).

University academics, and some groups in particular, will not be exempt from these processes. In all but the most strongly organised workplaces union recognition will depend critically on the attitude of employers. While individual universities may be unlikely to refuse to recognise existing unions altogether some may push for the creation of an enterprise specific union with no affiliation to FAUSA/UACA, as has already occurred at Bond University (see below). Alternatively, some may place pressure on an existing staff association to either distance itself or sever its links with FAUSA/UACA. An even more likely scenario is that AHEIA or individual Vice-Chancellors will, while recognising existing unions, simply declare that certain issues are only to be negotiated at institutional level (AHEIA has already done this in relation to the nomenclature of academic positions) and that some issues (like loadings, confirmation and promotion grievances) are not open to union representation or bargaining at any level.